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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 29, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wireless Unified Network Systems Corporation

Serial No. 74/528,633

Request for Reconsideration

Stuart E. Beck for Wireless Unified Network Systems Corporation

G. T. Glynn, Trademark Examining Attorney, Law Office 102
(Thomas Shaw, Managing Attorney)

Before Simms, Seeherman and Bottorff, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

On January 18, 2000 applicant filed a request for reconsideration of the Board's December 16, 1999 decision in which we affirmed the Examining Attorney's refusal of registration on the ground that the mark WIRELESS UNIFIED NETWORK SYSTEMS CORPORATION is merely descriptive of

"telecommunications services, namely, providing wireless network communications services using a sub-orbital high altitude communications network that is integrated with a land based communications network." With its request for reconsideration applicant has filed a request to reopen the appeal in order to enter a disclaimer of WIRELESS NETWORK SYSTEMS.

Trademark Rule 2.142(g) provides, in pertinent part, that an application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under Section 6 of the Act. Because an applicant may disclaim any matter in its mark without the approval of the Examining Attorney, the request to reopen the appeal for the purpose of submitting the disclaimer is granted, and the disclaimer of WIRELESS NETWORK SYSTEMS has been entered.

Applicant further requests that, with this disclaimer, the Board either reconsider and modify its decision; or remand the case to the Examining Attorney for further examination in view of the disclaimer.[1]

[1] With respect to its first alternative request applicant has added, to the request that the Board reconsider and modify its decision, the phrase "and/or schedule a rehearing." Such language appears to be superfluous, in that the Board's reconsideration of its decision in light of the disclaimer would in effect be a rehearing.

With respect to the second alternative, once an appeal has been decided on appeal the Board's authority under Trademark Rule 2.142(g) is limited to the entry of a disclaimer. Accordingly, applicant's request to remand the application to the Examining Attorney for further examination is denied.

Applicant argues that the disclaimer of WIRELESS NETWORK SYSTEMS places the application in condition for publication. Applicant bases its position on its assertion that during the oral hearing the Board raised the issue of whether applicant would agree to disclaim WIRELESS NETWORK SYSTEMS.

Applicant's argument is not persuasive. The fact that a panel may, during an oral hearing, discuss the possibility of a disclaimer does not represent a decision by the Board that such a disclaimer would place the application in condition for publication. We would also point out that during the oral hearing applicant offered to disclaim the words WIRELESS and NETWORK SYSTEMS CORPORATION, not WIRELESS NETWORK SYSTEMS, and the Examining Attorney rejected that suggestion, stating that the proposed disclaimer would not avoid the problem of descriptiveness of the mark as a whole.

In any event, the Board, in its December 16, 1999 decision, found that the mark as a whole—WIRELESS UNIFIED NETWORK SYSTEMS CORPORATION—was merely descriptive. Thus, the disclaimer of WIRELESS NETWORK SYSTEMS offered by applicant with its request for reconsideration does not overcome the descriptiveness refusal. We would also add that, if we had found the mark as a whole to be registrable with a disclaimer of WIRELESS NETWORK SYSTEMS, we would, in our decision, have afforded applicant an opportunity to submit such a disclaimer.

The request for reconsideration and/or remand is denied.

R. L. Simms

E. J. Seeherman

C. M. Bottorff
Administrative Trademark Judges
Trademark Trial and Appeal Board